

Aviation Drug Abatement *Update*

March 1994

REVISED

No. 94-2

SPECIAL EDITION—ALCOHOL MISUSE PREVENTION PROGRAM

NOTE: This newsletter is only intended to serve as an introductory overview to establishing an alcohol misuse prevention program. It does not substitute or replace the requirements found in the Code of Federal Regulations nor does it attempt to address all legal requirements or special circumstances of covered employers and their employees.

On February 15, 1994, the Federal Aviation Administration (FAA) published a final rule (copy attached to this newsletter) establishing an aviation industry alcohol misuse prevention program. It implements the FAA-related provisions of the Omnibus Transportation Employee Testing Act of 1991. Three primary tools will be used to ensure public safety by preventing alcohol misuse in aviation: (1) prohibiting certain alcohol-related conduct, (2) alcohol testing, and (3) employee education. Alcohol Misuse Prevention Program certification statements and reports summarizing the results of the alcohol program are also required. Procedures for conducting alcohol tests under this rule were also published in the Federal Register on February 15 (vol. 59, no.31, pg. 7340), as was a common preamble (vol. 59, no.31, pg. 7302) that introduces the FAA's rule and those of the other affected DOT agencies.

WHAT EMPLOYERS ARE SUBJECT TO THE RULE?

The following entities are required to implement an alcohol misuse prevention program (AMPP) for employees who perform safety-sensitive duties:

1. 14 CFR part 121 (part 121) certificate holders.
2. 14 CFR part 135 (part 135) certificate holders.
3. Air traffic control facilities not operated by the FAA or by or under contract to the U.S. military.
4. 14 CFR 135.1(c) (section 135.1(c)) operators - sightseeing flights.

WHO MUST BE TESTED?

Eight categories of covered employees are required to be included in an FAA-mandated AMPP. Additionally, each employee who performs a safety-sensitive function by contract for a covered employer must be subject to an AMPP.

The covered safety-sensitive functions are:

- ♦ **Flight crewmember duties.**
- ♦ **Flight attendant duties.**
- ♦ **Flight instruction duties.**
- ♦ **Aircraft dispatcher duties.**
- ♦ **Aircraft maintenance or preventive maintenance duties.**
- ♦ **Ground security coordinator duties.**
- ♦ **Aviation screening duties.**
- ♦ **Air traffic controller duties.**

PROHIBITED ALCOHOL-RELATED CONDUCT

Specific alcohol-related conduct by covered employees is prohibited, and employers may *not* use a covered employee to perform a safety-sensitive function if the employer has actual knowledge that the employee has engaged in such conduct. The prohibitions listed below are designed to prevent any adverse effect from alcohol on a covered employee during performance of safety-sensitive functions. (*NOTE: These provisions parallel those in 14 CFR section 91.17 governing crewmember use of alcohol; however, they do not repeal or otherwise affect those provisions.*)

Under the FAA rule ***alcohol use*** means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

• ***Alcohol Concentration***

Covered employees may not report for duty or remain on duty in a position requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater.

• ***On-Duty Use***

Covered employees may not consume alcohol while performing safety-sensitive functions. (This prohibition also applies to covered employees who are at work and immediately available to perform safety-sensitive functions.)

- ***Pre-Duty Use***

8 Hours - Employees may not perform *flight crewmember, flight attendant, or air traffic controller* duties within 8 hours after consuming alcohol.

4 Hours - Employees may not perform *flight instruction, aircraft dispatcher, aircraft maintenance or preventive maintenance, ground security coordinator or aviation screening* duties within 4 hours after consuming alcohol.

On-call or reserve employees who are not at work, but could be called at any time to perform safety-sensitive functions, are subject to the pre-duty alcohol prohibition (i.e., they would have to decline a call to work if acceptance would result in performing safety-sensitive duties within the 8 or 4 hours, whichever is applicable).

- ***Use Following an Accident***

Covered employees with knowledge of an accident involving an aircraft for which he/she performed a safety-sensitive function at or near the time of the accident may not use alcohol for *8 hours* after the accident unless he/she has been given a post-accident test, **OR** the employer determined that his/her performance could not have contributed to the accident.

- ***Refusal to Submit to a Required Alcohol Test***

Covered employees may not refuse to submit to a post-accident, random, reasonable suspicion, or follow-up alcohol test. No employer shall permit an employee who refuses to submit to such a test to perform or continue to perform safety-sensitive functions.

TESTING PROCEDURES AND METHODOLOGY (*NOTE: Use of non-evidential devices for screening authorized as of 5/22/95 - 60 FR 19675; 4/20/95*)

Employers are required to conduct alcohol testing in accordance with the procedures set forth in subpart C of 49 CFR part 40. These procedures include training and proficiency requirements for breath alcohol technicians (BAT), quality assurance plans for the breath testing devices (including calibration requirements), requirements for a suitable test location, and protection of employee records.

Testing shall be conducted using *only* **evidentiary breath testing (EBT) devices** approved by the National Highway Traffic Safety Administration (NHTSA) and listed on their Conforming Products List.

Two breath tests are required to determine if a person has a prohibited alcohol concentration. A screening test is conducted first. Any result with alcohol concentration less than 0.02 is considered a "negative" test and no further testing is done.

If the alcohol concentration is 0.02 or greater, a second test (called a confirmation test) must be conducted after a 15 minute waiting period. The confirmation test, if required, must be conducted using an EBT

1. That prints out the results, date and time, a sequential test number, and the name and serial number of the EBT to ensure the reliability of the results, **and**

2. For which NHTSA has approved a quality assurance program submitted by the device manufacturer.

The confirmation test result determines any actions taken under the rule as a consequence of the test. The employee and the BAT complete the alcohol testing form to ensure that the results are properly recorded. The BAT reports the test results to the employer.

**Guidance on the testing procedures will be published
by the Office of the Secretary of Transportation.**

CONDUCTING ALCOHOL TESTS

Generally, alcohol testing must occur only at or near the time of performance of safety-sensitive functions.

The following types of alcohol tests are required:

- ♦ **Pre-employment**
- ♦ **Post-accident**
- ♦ **Random**
- ♦ **Reasonable suspicion**
- ♦ **Return to Duty**
- ♦ **Follow-up**

PRE-EMPLOYMENT TESTING

Suspended indefinitely, 5/10/95 (60 FR 24765)

POST-ACCIDENT TESTING

After an accident as defined in part 121 Appendix J, each covered employee must be tested as soon as practicable following the accident, if that employee's performance either contributed to the accident or cannot be discounted as a contributing factor to the accident. A covered employee who is subject to post-accident testing shall remain *readily available* for testing or may be deemed by the employer to have refused to submit to testing.

If a post-accident test is not administered within 2 *hours* following the occurrence of the accident, the employer must prepare and maintain on file a record stating why the test was not promptly administered.

After 8 *hours* has passed, the employer shall cease attempts to administer the test and record why the test was not administered.

RANDOM TESTING

Covered employees must be selected for testing through a scientifically valid method, such as a random number table or computer-based random number generator. The dates for administering random tests must be reasonably spread throughout the year and should not be predictable. Employees notified of selection for testing must proceed immediately to the testing site. *The time between notification and testing should be no more than the requisite travel time to the testing site.* If an employee is notified of his/her selection while performing a safety-sensitive function he/she should cease performing the function as soon as it can be safely terminated and proceed to the testing site as soon as possible.

Random tests must be conducted:

- 1. While the employee is performing safety-sensitive functions;**
- 2. Just before the employee is to perform safety-sensitive functions; OR**
- 3. Just after the employee has ceased performing safety-sensitive functions.**

To ensure adequate deterrence and detection, some random testing should occur during each of the available times (i.e., before or after flights; before, during, or after shifts).

RANDOM TESTING RATE

Initially, the number of random tests conducted annually by the employer must equal at least 25 percent of all covered employees. However, the rule provides for adjustment to the annual rate based on the *violation rate* of the aviation industry.

***Violation Rate** means the number of covered employees found during random tests to have an alcohol concentration of 0.04 or greater plus the number of employees who refused a required random test, divided by the total reported number of employees in the aviation industry given required random tests plus the total reported number of employees in the aviation industry who refused a required random test.*

- If the violation rate in a given year is **1% or greater**, the annual testing rate requirement will be increased to **50%**.
- If the violation rate is **less than 0.5%** for 2 consecutive years, the random testing rate may be lowered to **10%**.
- If the violation rate is **0.5% or greater but less than 1%**, the random testing rate remains at **25%**.

The random testing rate is set for each industry; thus, aviation employees could be tested at a rate different from commercial motor vehicle drivers. The random testing rate will be determined based on the annual management information system (MIS) reports submitted by employers. Random testing rate adjustments will occur on January 1 of the year following submission of the annual reports (submitted by March 15 of each year).

REASONABLE SUSPICION TESTING

A covered employee must submit to an alcohol test if an employer has determined that reasonable suspicion exists that the employee has violated the alcohol misuse prohibitions. The determination must be based on a trained supervisor's specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee. *The observations must be made **during**, just **preceding** or just **after** the period of the work day that the covered employee is performing a safety-sensitive function.*

If a reasonable suspicion test is not administered within 2 *hours* following the determination to test, the employer must prepare and maintain on file a record stating why the test was not promptly administered.

After 8 *hours* has passed, the employer shall cease attempts to administer the reasonable suspicion test and record why the test was not administered.

Even if an alcohol test cannot be administered, an employee who is under the influence of or impaired by alcohol, as shown by behavioral, speech, or performance indicators of alcohol misuse, shall not report for duty or remain on duty or be permitted to perform safety-sensitive functions until a test can be administered and the result is below 0.02 OR the commencement of the employee's next duty period if at least 8 hours has elapsed. *(NOTE: Employers are not prohibited from taking other actions, including disciplinary action, under their independent authority as employers.)*

RETURN TO DUTY TESTING

Before a covered employee returns to duty in a safety-sensitive function after engaging in prohibited conduct, he/she shall undergo a return to duty test. Additionally, he/she can not perform a safety-sensitive function until a result indicating an alcohol concentration of less than 0.02 is obtained. *(NOTE: No person who is permanently barred from service (see pg. 9) may be returned to the performance of the safety-sensitive function he/she performed before the bar.)*

FOLLOW-UP TESTING

Each covered employee, who has been identified by a substance abuse professional (SAP) as needing assistance in resolving a problem with alcohol misuse and who has returned to duty performing a safety-sensitive function, shall be subject to follow-up testing. Follow-up tests are to be *unannounced* and at least 6 *tests* must be conducted in the first 12 *months* after the employee is back on the job. Follow-up testing may continue for up to 60 months.

***NOTE:** A follow-up test result of 0.04 or greater is a violation of the rule.*

Follow-up tests must be conducted:

- 1. While the employee is performing safety-sensitive functions;**
- 2. Just before the employee is to perform safety-sensitive functions; OR**
- 3. Just after the employee has ceased performing safety-sensitive functions.**

RETESTING OF COVERED EMPLOYEES WITH AN ALCOHOL CONCENTRATION OF 0.02 OR GREATER BUT LESS THAN 0.04

If the employer desires to permit an employee to perform a safety-sensitive function *within 8 hours* following administration of an alcohol test indicating an alcohol concentration of 0.02 or greater but less than 0.04, the employer must first retest the employee. The employee can return to the safety-sensitive function if the retest results in an alcohol concentration of less than 0.02.

RECORDKEEPING

Each employer must retain records of its AMPP. Records must be maintained in a secure location with controlled access and are releasable only with the express written consent of the employee, except as provided in the rule. Records shall be maintained in accordance with the following schedule:

5 Years

- Alcohol test results of 0.02 or greater.
- Documentation of refusals.
- EBT calibration documentation.
- Employee evaluations and referrals.
- Copies of the annual reports submitted to the FAA for those employers required to submit such reports.

2 Years

- Records related to the collection process.
- Training records.

1 Year

- Test results below 0.02.

REPORTING OF RESULTS

Only certain aviation employers conducting AMPPs will be required to submit annual reports of program results to the FAA. *Even though an employer may not be required to submit an annual report, the employer remains responsible for maintaining AMPP records.*

Reports are due by March 15 of each year covering the previous calendar year (January 1 through December 31). The reporting format included in the rule is the standard reporting form for aviation employers. **No other form**, including another DOT operating administration's form, **is acceptable** for submission to the FAA.

Employers with *no screening test results of 0.02 or greater or other violations of prohibited alcohol-related conduct* may use the FAA's "E-Z" form to report alcohol program results to the FAA.

The following employers are required to submit annual reports:

- **All part 121 certificate holders.**
- **All entities with 50 or more covered employees as of January 1 of the reporting year.**
- **Other aviation employers as required by the FAA. (Employers in this category will be notified in writing by the FAA that they will be required to submit a report.)**

The forms will be published in the Aviation Drug Abatement Update closer to the first reporting date (March 15, 1996).

ACCESS TO RECORDS

Each employee is entitled to copies, upon written request, of any records concerning his/her use of alcohol, including test results. Employer release of information regarding an employee's records requires the specific written consent of the employee authorizing the release to an identified individual. If the employee provides appropriate written consent, the employer *must* release the records. The employer *is permitted* to disclose information arising from the results of an alcohol test or from the determination that the employee violated any of the prohibitions to the employee or the decision maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the employee and arising from a test or determination of misuse.

Additionally, employers shall release information:

- To the OST, FAA, or another DOT agency with regulatory authority over the employer or employee.
- To the NTSB (post-accident test results pertaining to the accident under investigation).
- As otherwise required by law (e.g., a properly issued subpoena or order from a court of competent jurisdiction).

CONSEQUENCES FOR EMPLOYEES ENGAGING IN ALCOHOL-RELATED CONDUCT

- ***Removal From Safety-Sensitive Function***

Covered employees are prohibited from performing safety-sensitive functions if they have engaged in prohibited conduct under the FAA rule or another DOT agency's alcohol misuse rule, including refusal to submit to random, reasonable suspicion, post-accident, or follow-up testing. Employers who have determined that an employee has engaged in prohibited conduct shall ensure the employee does not perform a safety-sensitive function.

- ***Permanent Disqualification From Service***

If an employee is determined to have violated the *on-duty* use prohibition, or to have violated the other prohibited alcohol-related conduct provisions *two times* after the employee becomes subject to the prohibitions, then he/she is permanently precluded from performing the safety-sensitive duties he/she performed before such a violation. The bar on two-time violators will apply both to persons who go through rehabilitation and to those who, after evaluation by a SAP, are determined not to need treatment.

- ***Notice to the Federal Air Surgeon***

Employers are required to notify the Federal Air Surgeon *within 2 working days* of any instance in which a 14 CFR part 67 (part 67) airman medical certificate holder engages in prohibited alcohol-related conduct. Additionally, copies of the SAP's evaluations of a medical certificate holder must be forwarded to the FAA within 2 working days of receipt by the employer. No covered employee who holds an airman medical certificate shall perform a safety-sensitive function after a violation unless and until the Federal Air Surgeon so recommends.

All documents should be sent to:

Federal Air Surgeon, Office of Aviation Medicine
Drug Abatement Division (AAM-800)
400 7th Street, S.W.
Washington, DC 20590

- ***Notice of Refusals***

Employers are required to notify the FAA of any instance in which a 14 CFR part 61, part 63, or part 65 airman certificate holder refused to submit to a required alcohol test (except pre-employment or return to duty).

Notification of refusals should be sent to:

FAA, Aviation Standards National Field Office
Airmen Certification Branch (AVN-460)
P.O. Box 25082
Oklahoma City, OK 73125

- ***Other Alcohol-Related Conduct***

Employees found to have an alcohol concentration of **0.02 or greater but less than 0.04** shall not perform or continue to perform safety-sensitive functions (nor shall the employer permit the employee to perform or continue to perform) until:

- | |
|---|
| <ol style="list-style-type: none">1. The employee is retested with a result <i>below 0.02</i>; <u>OR</u>2. The start of the employee's next regularly scheduled duty period, but not less than 8 hours following administration of the test. |
|---|

ALCOHOL MISUSE INFORMATION AND TRAINING

Each employer is required to provide educational materials that explain the AMPP requirements and the employer's policies and procedures with respect to meeting those requirements. Each employee *must* receive a copy of the material *prior* to the start of alcohol testing under the FAA's rule. Each new covered employee shall also be given a copy of the material. Written notice of the availability of this information must be provided to representatives of employee organizations.

The alcohol misuse informational materials must include:

- **Identity of a contact person to answer questions.**
- **Categories of employees subject to the AMPP.**
- **Sufficient information about the safety-sensitive functions performed by those employees to make clear what period of the work day each covered employee is required to be in compliance with the alcohol misuse requirements.**
- **Prohibited employee conduct.**
- **Testing circumstances.**
- **Testing procedures.**
- **The requirement to submit to alcohol tests.**
- **Explanation of what constitutes a refusal to submit to an alcohol test.**
- **Consequences for violations of the prohibitions (including refusals).**
- **Consequences for alcohol concentration of 0.02 or greater but less than 0.04.**
- **Information on the effects of alcohol misuse, signs and symptoms of alcohol misuse, intervention methods, employee assistance program referral.**

If the employer has separate company policies, then these may also be included in the written materials.

SUPERVISOR TRAINING

Supervisors who will make determinations on reasonable suspicion testing must receive *60 minutes* of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse. *(Unlike the antidrug rule, there is no requirement for recurrent training in the alcohol misuse rule.)*

EMPLOYEE REFERRAL, EVALUATION, AND TREATMENT

An employee who engages in prohibited conduct must be evaluated by a SAP to determine what assistance, if any, the employee needs. The SAP may be employed by, under contract to, or not affiliated with the employer. The choice of the SAP and assignment of costs shall be made in accordance with employer/employee agreements and employer policies. Any treatment or rehabilitation will be provided in accordance with the

employer's policy or labor/management agreements. The employer is not required to provide rehabilitation, pay for treatment, or reinstate the employee in his/her safety-sensitive position. However, employers must advise covered employees who engaged in prohibited conduct of the available resources, including names, addresses and telephone numbers, for evaluation and treatment of alcohol problems.

Any employer who decides to return an employee to a safety-sensitive position must ensure that the employee:

- 1. Has been evaluated by a SAP.**
- 2. Has complied with any treatment prescribed by the SAP.**
- 3. Has taken a return to duty alcohol test (with a result less than 0.02).**
- 4. Is subject to follow-up testing (if required).**
- 5. Has been recommended for return to duty by the Federal Air Surgeon (if a part 67 airman medical certificate holder).**

EMPLOYER AMPP CERTIFICATION STATEMENTS

Employers are required to submit certification statements with specified identifying information and an agreement to comply with the AMPP requirements. Statements must be submitted in **duplicate** according to the implementation schedule and mailed to:

FAA, Office of Aviation Medicine
Drug Abatement Division (AAM-800)
400 7th Street, S.W.
Washington, DC 20590

Contractor companies may submit certification statements directly to the FAA and may be authorized to implement AMPPs for their own covered employees.

Each employer/contractor certification statement must include:

- Company name, address, and telephone numbers (voice and FAX).**
- AMPP Manager name, address, and telephone number.**
- FAA operating certificate number, if applicable.**
- Date testing will begin.**
- Signed certification statement.**

A sample certification statement follows this newsletter. Employers may use a different format, as long as the required information is provided.

CONSORTIA AMPP CERTIFICATION STATEMENTS

Employers and contractors may join consortia to comply with the regulations. However, *each employer/contractor remains individually responsible for ensuring compliance with the regulations and must maintain all required records.*

Consortia must submit certification statements setting forth the aspects of the AMPP that the consortium intends to provide (e.g., random testing, SAP, etc.) to aviation employers and certify the AMPP will be implemented in accordance with the regulations.

Each consortium certification statement must include:

- **AMPP Manager name, address, and telephone numbers.**
- **List of all services provided.**
- **Signed certification statement.**

A sample certification statement follows this newsletter. A different format may be used as long as the required information is provided.

PHASED IMPLEMENTATION

Each class of employers has a certain certification statement submission date with implementation of the AMPP approximately 6 months later. Contractors must be in compliance 12 months after the date on which employers' must submit their certification statements.

Alcohol Misuse Prevention Program (AMPP) Timetable			
	AMPP Certification Statement Submitted	Implement AMPP	Contractors Implement AMPP No Later Than
Group A	7/1/94	1/1/95	7/1/95
Group B	1/1/95	7/1/95	1/1/96
Group C	7/1/95	1/1/96	7/1/96
Group A - All part 121 certificate holders; part 135 certificate holders with more than 50 covered employees; and covered air traffic control facilities			
Group B - Part 135 certificate holders with 11-50 covered employees			
Group C - Part 135 certificate holders with 10 or fewer covered employees; operators defined in section 135.1(c)			

No testing by employers shall be conducted under the FAA's alcohol misuse rule prior to the dates specified (i.e., 1/1/95;7/1/95;1/1/96).

IMPLEMENTATION SCHEDULE FOR NEW EMPLOYERS

After March 17, 1994 (the effective date of the rule), new certificate holders, operators, and air traffic control facilities must use the following implementation schedule.

Alcohol Misuse Prevention Program (AMPP) Timetable After 3/17/94			
	AMPP Certification Statement Submitted*	Implement AMPP*	Contractors Implement AMPP*
Applicant for part 121 or part 135 certificate	Prior to beginning operations	Concurrently with beginning operations	Within 180 days of employer implementation
ATC facility	60 days prior to initiation of operations	Concurrently with beginning operations	Within 180 days of employer implementation
Section 135.1(c) operator	60 days prior to initiation of operations	Concurrently with beginning operations	Within 180 days of employer implementation
* -- or dates specified in rule, whichever are <u>later</u> .			

QUESTIONS & ANSWERS

Q 1: My company is a part 121 certificate holder. When can we start alcohol testing?

A: On January 1, 1995. Unlike the implementation of the antidrug rule, covered employers (*i.e.*, air carriers, operators, air traffic control facilities) CANNOT conduct any testing under the auspices of the rule prior to their specified implementation dates. This applies even if the employer has submitted a certification statement to the FAA and received back the stamped duplicate.

Q 2: I understand that the "bottle to throttle" provisions in 14 CFR section 91.17 apply to crewmembers now, but I am unclear on when the alcohol use prohibitions in the new rule will affect our employees. This is especially important since the same provisions prohibit the employer from using an employee to perform safety-sensitive functions if the employee is in violation of the provision.

A: To ensure that employees have adequate notice of the requirements of the new rule, the provisions become applicable to employees and employers on the employers' implementation date. The final rule requires that the written materials provided by the employer include both "[s]ufficient information about the safety-sensitive functions performed by those employees to make clear what period of the work day the covered employee is required to be in compliance with these alcohol misuse requirements" and "[s]pecific information concerning employee conduct that is prohibited" by the rule. The rule does not and will not replace 14 CFR section 91.17, even when testing begins.

Q 3 : What do I need to do before my implementation date?

A: A number of activities must occur prior to the start of testing. Employers must develop written materials for employees as required under the rule, which specifies in detail the necessary contents. These materials must be distributed before any testing begins. Additionally, employers must make all arrangements for conducting all types of alcohol tests, including ensuring that trained breath alcohol technicians are available (either as employees or under contract), that approved evidential breath testing devices are available (with appropriate provisions for maintenance and external calibrations), and that supervisors who will make reasonable suspicion testing determinations have been trained. The random testing selection methodology and pool must be developed--although these will likely be the same as for the antidrug program, employers must ensure that the appropriate rate is used in the event that drug and alcohol testing are not conducted at the same annual rate. Employers must also arrange for provision of substance abuse professional services.

Q 4: What do I need to do on my implementation date? January 1, 1995, is both a Sunday and a holiday.

A: As of your implementation date you must be completely ready to begin conducting alcohol testing. Any person hired for a covered function on or after that date must undergo a pre-employment alcohol test. Selection for and conduct of random testing should begin sufficiently early in the year to allow testing to be spread reasonably throughout the calendar year, as required under the rule. Reasonable suspicion testing would be required, if appropriate, on January 1, 1995, for those employers that will be operating on that day.

Q 5: What about contractor implementation?

A: A contractor company may begin testing any time after the earliest implementation date for the employers for which the contractor's employees perform safety-sensitive functions, provided the company has submitted the required certification statement to the FAA. Each covered employer must ensure that its contractor companies implement an FAA-mandated AMPP no later than the date specified in the FAA's rule. These dates occur 6 months after the implementation date for each category of employer.

Q 6: Will alcohol certification statements be given a plan number?

A: Yes--the same number as the antidrug program plan. The FAA will maintain combined program files for each company.

Q 7: Are there any evidential breath testing (EBT) devices that we can purchase now that we know will meet DOT requirements?

A: Not any of which we are aware. Because the final rules were just published on February 15, 1994, EBT manufacturers still have to file quality assurance plans with the National Highway Traffic Safety Administration for approval before their EBT device can be used to conduct FAA testing. Manufacturers will also have to ensure that the printed

results include all of the data elements required in the final rule for alcohol testing procedures (49 CFR part 40). Several data elements were added between the notice and final rule.

Q 8: How much random testing must be done pre-flight?

A: We have not specified a particular percentage of testing that must be conducted prior to flights. Our primary concern is that sufficient testing is conducted during all available times to ensure adequate deterrence. If no testing is conducted pre-flight, for example, individuals would not be deterred from reporting to duty with an impermissible alcohol concentration. (The DOT rules require testing for alcohol concentration levels that are unlikely to be detected by simple observation, which increases the utility of random testing.) We are sensitive to the possible costs associated with pre-flight testing, and will do our best to suggest ways to minimize the disruption (for example, employers could establish testing locations near the points where crewmembers must check in).

Q 9: The rule provides for possible changes in the random testing rate. What is the earliest that an increase or decrease could occur?

A: The FAA must have data after all covered employers have implemented programs before the random alcohol testing rate can change, which means 1996 will be the first year of usable program data. Therefore, the earliest an increase in the rate could be required is January 1, 1998 (i.e., the 1996 data would be submitted and analyzed in 1997. If the data indicates a violation rate of 1 percent or more, a notice would be placed in the Federal Register in late 1997 announcing that the rate for 1998 would be 50 percent). The earliest the rate could decrease to 10 percent is January 1, 1999, since the FAA must have 2 years of data indicating a violation rate of less than 0.5 percent to decrease the rate.

Q 10: Will the FAA be issuing implementation guidelines?

A: We are in the process of preparing those guidelines now; they may be issued by the FAA or in conjunction with the Office of the Secretary of Transportation and the other affected operating administrations.

Q 11: Can I conduct drug and alcohol tests (especially random and pre-employment tests) at the same time?

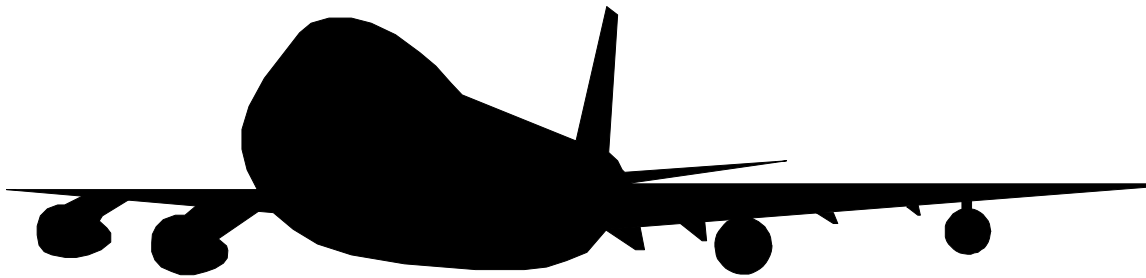
A: Yes, but remember, the alcohol rule requires random alcohol testing to be conducted at or near the time of the performance of safety-sensitive functions; therefore, combined random drug and alcohol testing would have to be conducted during the times permitted for alcohol testing.

Q 12: Can I combine supervisor training on drugs and alcohol?

A: Yes, as long as the training covers the required topics in each rule and totals 120 minutes. Supervisors must be trained on the *separate* bases for conducting reasonable cause drug testing and reasonable suspicion alcohol testing. They should be clearly advised of the indicators of possible *drug* use **and** the indicators of possible *alcohol* misuse.

Q 13: If a person has a return to duty test result of 0.02 or greater but less than 0.04, can the employer just wait until the employee's next duty period and put him/her to work without a test?

A: No. Unlike other types of tests, the employee must have a test result below 0.02 before he/she can return to a safety-sensitive function.



Published by the FAA/Drug Abatement Division (AAM-800)
400 7th Street, SW, Washington, DC 20590
Comments or suggestions should be sent to the above address.

SAMPLE CERTIFICATION STATEMENT for Employer/Contractor Company

XYZ CORPORATION
FAA ALCOHOL MISUSE PREVENTION PROGRAM (AMPP)
CERTIFICATION STATEMENT

PART I - EMPLOYER INFORMATION

1. EMPLOYER/CONTRACTOR COMPANY NAME/ADDRESS/TELEPHONE:

*XYZ Corporation
1234 West Lane
Baltimore, MD 01234
(410) 555-1234 (Voice) / (410) 555-5678 (Fax)*

2. AMPP PROGRAM MANAGER NAME/ADDRESS/TELEPHONE:

*John Smith, Manager
Human Resources Division
1234 West Lane
Baltimore, MD 01234
(410) 555-4321 (Voice) / (410) 555-8765 (Fax)*

3. CERTIFICATES ISSUED BY THE FAA:

Operating Certificate No.: *XXX000-555 Operator (Part 121)*
Date Issued: *August XX, 1985*

4. IMPLEMENTATION DATE - The carrier will begin its alcohol testing program on *January 1, 1995*.

5. CONSORTIUM - The consortium that provides AMPP services:

*ABC Consortium
4444 North Drive
Washington, DC 12345
(202) 555-5555 (Voice) / (202) 555-1000 (Fax)*

PART II - CERTIFICATION STATEMENT

I certify that I am authorized to represent **XYZ Corporation** in this matter, that the information in Part I of this document is correct to the best of my knowledge and belief, and that **XYZ Corporation** will comply with the provisions of the Federal Aviation Administration's alcohol misuse prevention program regulations and with the terms herein.

(Name)

(Date)

(Title)

SAMPLE CERTIFICATION STATEMENT for a Consortium

ABC CONSORTIUM

FAA ALCOHOL MISUSE PREVENTION PROGRAM (AMPP)
CERTIFICATION STATEMENT

PART I - CONSORTIUM INFORMATION

1. CONSORTIUM MANAGER NAME/ADDRESS/TELEPHONE:

*Mary Jones, Manager
Human Resources Division
4444 North Drive
Washington, DC 20000
(202) 555-5555*

2. SPECIFIC SERVICES CONSORTIUM WILL PROVIDE:

- A.** Alcohol Misuse Training/Educational Materials
- B.** Alcohol Breath Testing
- C.** Substance Abuse Professional Services
- D.** Types of Testing:
 - a.** Pre-employment
 - b.** Random
 - c.** Post-accident
 - d.** Reasonable Suspicion
 - e.** Return to Duty
 - f.** Follow-up
- E.** Other Services: Preparation of annual report, EBT calibration and maintenance

PART II - CERTIFICATION STATEMENT

I certify that I am authorized to represent **ABC Consortium** in this matter, that the information in Part I of this document is correct to the best of my knowledge and belief, and that **ABC Consortium** will comply with the provisions of the Federal Aviation Administration's alcohol misuse prevention regulations and with the terms herein.

(Name)

(Date)

(Title)